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10/612,049	07/03/2003	Jan van Dijk	055506-0114	1382

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EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/612,049

Applicant(s)

DIJK, JAN VAN

Examiner

Kent L. Bell

Art Unit

1661

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to application filed 7/3/03 communication(s) filed on 7/3/03
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/3/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

### **Detailed Action**

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 8 and 9, Applicant states the instant plant is a “single plant mutation”. However, applicant has not stated whether the mutation was naturally occurring or induced. If naturally occurring, applicant should state such in the specification. If induced, applicant should set forth in the specification the methodology utilized to derive the instant cultivar.

B. Page 1, lines 16 and 17, and page 4, line 12, Applicant states the instant plant was selected as a flowering plant “within a production clone” and “in a selected”, respectively. This recitation is not unclear as it is not understood what applicant is intending. It is not understood how a whole plant could come from “within” one plant. It appears applicant may have intended to state the instant plant was selected as a flowering plant within a - -planting of the production clone- -.

**Detailed Action**

C. Page 1, line 17, Single quotation marks should be placed around the cultivar name “Pink Champion” as this is the proper way to designate a cultivar name. The double quotation marks should be deleted.

D. Applicant should set forth in the specification the method and location in which the instant plant was asexually reproduced. Further, applicant should state in the specification, if accurate, that the instant plant’s characteristics are firmly fixed and retained through successive generations of asexual reproduction. In addition, if accurate, applicant should state the instant plant reproduces true to type through successive generations of asexual reproduction. It is noted that applicant states progeny which flowered have been true to type in plant and flower characteristics on page 4, lines 15 and 16. However, as stated above, the entire plant has to be stable and reproduce true to type in successive generations of asexual reproduction.

E. Applicant should set forth in the specification a brief comparison between the instant plant and its parental cultivar, such need not be in great detail, but should at least distinguish the plants from one another.

F. Page 2, line 7, Applicant states “peduncle”. Rather than stating “peduncle” applicant should state -scape- as this is the more appropriate term to use in this instance.

**Detailed Action**

G. Page 2, lines 7, 12, 14, and 15, and page 3, lines 5-11, and abstract, Applicant states “flowers” and “flower”. Rather than stating “flowers” and “flower” applicant should state either - -inflorescences- - or - -inflorescence- - where appropriate as these are the more appropriate terms to use in these instances.

H. Page 3, lines 16-18, Applicant should set forth in the specification the age of the plant when described and container size, if grown in a container.

I. Page 5, lines 1-4, Applicant should set forth in the specification additional information relative to the instant plant including the typical and observed plant shape.

J. Page 5, line 6, Applicant states mature height is approximately 30 cm to “60 cm”. However, on page 2, line 5, and abstract, Applicant states mature height is approximately “70 cm”. These recitations are contradictory. Correction and/or clarification is necessary.

K. Page 5, lines 6 and 7, Applicant should set forth in the specification additional information relative to the instant plant’s leaves including the typical and observed leaf margin descriptor.

**Detailed Action**

L. Page 6, line 3, Applicant states “length 15 cm”. Applicant previously stated a maximum leaf length of “18 cm” on page 5, line 11. It is uncertain if applicant meant to state “15 cm” or if it was intended to be “18 cm”. Correction and/or clarification is necessary.

M. Applicant should set forth in the specification the lastingness of the inflorescence.

N. Applicant should set forth in the specification information relative to the instant plant’s scape including the typical and observed scape coloration with reference to the employed color chart.

O. Page 6, line 20, and page 7, lines 1 and 2, and abstract, Applicant states “peduncle”. Rather than stating “peduncle”, applicant should state - -scape- - as this is the more appropriate term to use in this instance.

P. Page 7, lines 4-6, Applicant should set forth in the specification additional information relative to the instant plant’s spathe including the typical and observed spathe margin descriptor.

**Detailed Action**

Q. Page 7, lines 10-12, Applicant states “blossoms” and “flowers”. Rather than stating “blossoms” and “flowers”, applicant should state - -inflorescences- - as this is the more appropriate term to use in these instances.

R. Page 8, line 3 , Applicant states spadix turns “white”. Applicant should set forth in the specification a color designation for the “white” coloration with reference to the employed color chart. The recitation “white” is vague and insufficient in this regard.

S. Page 8, line 4, Applicant states the instant plant produces berries. Applicant should set forth in the specification information relative to the instant plant’s berries including the typical and observed berry amount per spadix (if available), size, and coloration with reference to the employed color chart.

T. Applicant should set forth in the specification the typical and observed number of flowers produced per spadix, flower shape, and diameter.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically



**Detailed Action**

identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Comments**

Applicant should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (703) 306-3224. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (703) 308-4205.

The fax phone number for the group is (703) 305-3014 or 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*